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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,650	04/17/2006	Karin Scherer	0579-1117	2459

465 7590 06/30/2011  
YOUNG & THOMPSON  
209 Madison Street  
Suite 500  
Alexandria, VA 22314

EXAMINER
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PADGETT, MARIANNE L

ART UNIT	PAPER NUMBER
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1717

NOTIFICATION DATE	DELIVERY MODE
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06/30/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/567,650

**Applicant(s)**

SCHERER ET AL.

**Examiner**

MARIANNE L. PADGETT

**Art Unit**

1717

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 June 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 11 April 2011. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: 1, 3, 9, 18, 19 and 21.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/MARIANNE L. PADGETT/  
Primary Examiner, Art Unit 1717

## Continuation of 3. NOTE:

The amendment to dependent claim 21 would change the scope of the new matter issue as previously presented in section 3 of the action mail 12/9/10. It would also change the scope of the claim itself, in that the previous language essentially asserted that the claimed refractive indexes were characteristic of any fluorocarbon, which would not be the scope with the amended claims.

Also, the amendment to claims 9 & 18 are ambiguous in that in the preceding claim language "depositing" was only used with respect to the amorphous layer, i.e. the exterior layer, but there was only one such layer, thus "each" does not have a clear meaning; but the previous language "each deposition step", while not employing proper antecedent terminology appeared to refer to the three physical vapor phase deposition (PVD) steps, thus if that was the intent -- each said deposition step -- or -- each said PVD step -- would refer to those three depositions; if the intent was for referring to steps making all four layers, language such as -- each said PVD step and said depositing step -- would refer to all four layer depositions/depositing steps, but would be a new issue.

It is noted that while changing the substrate to an ophthalmic lens is technically a new issue, as it significantly changes the scope of the claim as written, the amendment to the claim with respect to this issue does correct the previous new matter issue with respect to the substrate or lens, and since as stated by the examiner on page 8 of the 12/9/10 action both options of what was literally claimed & what was actually disclosed in the original specification were stated to be covered in the rejection, this amendment would eliminate the optional Klemm et al. reference, thus the applying issues by removing a new matter issue and an option with respect art.

## Continuation of 5. Applicant's reply has overcome the following rejection(s):

The proposed amendments would correct some 112 issues, particularly with respect to the substrate versus ophthalmic lens (112, first, new matter);

antecedence clarifications have been appropriately made in claims 7 & 19;

the lack of clarity with respect to the refractive index in independent claim 1 is removed by broadening the scope in independent claim 1 by deleting all reference to refractive index therein;

in claims 9 & 18 one set of clarity issues are removed to be replaced by another, but merely changes issues with respect to clarity in claims 9 & 18, or scope in claim 21.

## Continuation of 11. does NOT place the application in condition for allowance because:

As noted above, Changes in scope with respect to refractive index & clarity plus scope with respect to pressures when performing deposition processes or which deposition processes require further consideration.

/MLP/dictation software

6/24/11